

the application were that one of the jurors summoned to attend that particular assize sent his farm-bailiff to personate him. Nor did he even take the trouble to see that the bailiff was qualified to serve. This deputy juror could never have served. In these circumstances the Court of Criminal Appeal held that there had been a mis-trial and ordered a *venire de novo*. This is the only form of a new trial for a felony known to our criminal law, and it is only granted when there has been an irregularity in the trial, as where, for instance, the jury were not *all* present where at verdict of guilty was pronounced by their foreman. The case under notice is not unlike that of *Rex v. Tremaine* (7 D. & R. 684) where, a *tales* having been prayed, one J. Williams was called in court to serve on a jury. He requested his son R. H. Williams to appear for him. The son did so, and was sworn and served on the jury although he had no qualification to serve. It was held that there had been a mis-trial, and a *venire de novo* was granted.

NEW TRIAL IN CRIMINAL CASES.

What has been said above shews that it is a mistake to say there is *no* procedure for a new trial in cases of felony. In misdemeanour (according to *Rex v. Mawley*, 6 T.R. 638) a new trial may be granted in the discretion of the Court where the defendant is convicted, but not when he is acquitted, even if there has been a misdirection. It is interesting to notice that the question of new trial for misdemeanour has scarcely ever arisen except in cases of *quasi*-civil character such as non-repair of a highway. In the view of many law reformers, the Court of Criminal Appeal ought to have power to order a new trial in all cases whether there has been a conviction or an acquittal. The knowledge that there was such a power would certainly have effect to diminish the number of appeals by prisoners, because a second trial is an ordeal which a guilty man is not likely to face with equanimity. It is sometimes forgotten that in criminal cases there is no discovery. Those conducting the prosecution know but little of the prisoner's case. They cannot interrogate as the plaintiff can in a civil action, nor can the prisoner be compelled to file an affidavit of documents. A first trial, however, would have effect to give